

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

CUSTOMER NO. 85358

Applicant: Corts et al.
Application No.: 09/839,451
Filed: 04/20/2001
Title:

Attorney Docket No.: 1003-001

Group Art Unit: 3688
Examiner: Champagne, Donald

**PETITION TO WITHDRAW A HOLDING OF ABANDONMENT
UNDER 37 C.F.R. 1.181(a)**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

In response to the Notice of Abandonment mailed August 24, 2009 please consider the following petition.

Declaration of Taylor M. Davenport

1. My name is Taylor M. Davenport and I am an attorney registered to practice before the United States Patent & Trademark Office with a registration number of 42,466. The following statements are true to the best of my knowledge.
2. Applicants filed the U.S. Patent Application Serial Number 09/839,451 with the law firm of Morgan & Finnegan, LLP and prosecution continued with that firm.
3. The Patent Office mailed an Office Action with the Office Action made final to Morgan & Finnegan, LLP at 345 Park Avenue on February 20, 2009 (herein the “first Final OA”).
4. On or around March 18, 2009, Morgan & Finnegan filed for bankruptcy (see the exhibit to the Notice of Abandonment).
5. The Patent Office mailed a second Office Action with the Office Action made final to Morgan & Finnegan, LLP at the same address on March 27, 2009 (herein the “second Final OA”).
6. The second Final OA indicated on the Summary Page that the period for reply ran from the mailing date of the second Final OA (i.e., from March 27, 2009) with a shortened statutory period set to expire 3 months from March 27, 2009.
7. Paragraph 31 of the second Final OA states that “the application is subject to abandonment six months after mailing of the *last* Office Action.” (page 8, second Final OA, emphasis added). Six months from March 27, 2009 is September 27, 2009.
8. I filed a response including a Request for Continued Examination and amendments on August 26, 2009 with a petition for a two month extension of time and the appropriate fee. This response was timely based on the March 27, 2009 mailing date.

9. The Patent Office mailed a Notice of Abandonment to Morgan & Finnegan on August 24, 2009 based on the mailing date of the first Final OA.

10. On or about I filed a Power of Attorney executed by all the inventors on November 2, 2009, at which time I discovered the Notice of Abandonment.

11. I called Donald Champagne, the examiner in the instant application, on or about November 2, 2009 to discuss the abandonment. His voicemail indicated he was out of the office until November 17, 2009 and that calls should be directed to Robert Weinhardt.

12. I called James Myrhe, the examiner's supervisor, on or about November 2, 2009 and left a message. Examiner Myrhe is listed as the examiner's supervisor in the second Final OA.

13. I called Robert Weinhardt on or about November 2, 2009 and left a message. Examiner Weinhardt called back later that day to discuss the application. After explaining the situation, he indicated that he would ask around to see what the preferred solution was, but that a Petition to Withdraw the Holding of Abandonment might be appropriate.

14. I spoke with Examiner Champagne on November 17, 2009. He indicated that a Petition to Revive would be preferred, but that I was free to try a Petition to Withdraw the Holding of Abandonment.

15. All statements made herein of my own knowledge are true, all statements made herein on information and belief are believed to be true, and all statements made herein are made with the knowledge that whoever, in any matter within the jurisdiction of the Patent and Trademark Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document,

or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom.

November 17, 2009
Date

/Taylor M. Davenport, Reg. #42,466/
Taylor M. Davenport
Registration Number 42,466